

AMENDED IN ASSEMBLY MAY 1, 2006

AMENDED IN ASSEMBLY MARCH 23, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1958

Introduced by Assembly Member Leslie

February 6, 2006

An act to add Article 2.5 (commencing with Section 17545) to Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, relating to the Internet.

LEGISLATIVE COUNSEL'S DIGEST

AB 1958, as amended, Leslie. The Internet: free gift offers.

Existing law makes it unlawful for any person to use the term “gift” in any manner that would be untrue or misleading. Existing law also prohibits the offering, as a part of an advertising plan or program, of any prize, gift, money, or other item of value as an inducement to visit a location, attend a sales presentation, or contact a sales agent, unless specified disclosure are made.

This bill would require ~~an Internet advertisement that solicits consumers residing in this state to click or otherwise visit an advertisement in order to receive a free gift to clearly disclose the steps required for the consumer to redeem the free gift, as specified. The bill would require that the advertisement not permit a consumer to proceed until the consumer acknowledges that he or she has read the disclosure~~ *any advertisement or commercial e-mail advertisement, as defined, that promotes or solicits a consumer to redeem an Internet free gift offer, as defined, to provide the consumer with a specified disclosure statement. The bill would require the disclosure statement*

to contain a check-off box that confirms that the consumer has read and agreed to the terms before redeeming the offer.

This bill would provide that if any part of these provisions or their application is deemed invalid, the invalidity would not affect other provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.

State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Article 2.5 (commencing with Section 17545) is added to Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, to read:

Article 2.5. Internet *Free* Gift Offers

17545. For purposes of this chapter, the following terms have the following meanings:

(a) “Advertisement” ~~has the meaning set forth in subdivision (a) of Section 22947.1.~~

~~(b) means any communication on the Internet that promotes or solicits a consumer to redeem an Internet free gift offer.~~

(b) “California electronic mail address” or “California e-mail address” has the meaning set forth in subdivision (b) of Section 17529.1.

(c) “Commercial e-mail advertisement” means any communication transmitted to a California electronic mail address or California e-mail address for the sole purpose of promoting or soliciting a consumer to redeem an Internet free gift offer.

(d) “Consumer” means an individual who resides in this state and who uses a computer located in this state to redeem ~~a an~~ Internet free gift offer.

~~(e)~~
(e) “Disclosure statement” means a clear and conspicuous statement of terms, conditions, and obligations, conveyed at the outset of the offer, upon which receipt and retention of the Internet free gift offer by the consumer are contingent.

(f) “Internet” has the meaning set forth in paragraph (6) of subdivision (f) of Section 17538.

1 (g) “Internet free gift offer” means any advertisement or
2 commercial E-mail advertisement that offers a free gift or gifts to
3 a consumer in exchange for the consumer taking certain actions,
4 including, but not limited to, the purchasing of a product or
5 products or the referral of the gift offer to a separate unique
6 household, in order for the consumer to redeem the free gift
7 offer.

8 17545.1. (a) Any advertisement ~~soliciting consumers over~~
9 ~~the Internet to click or otherwise visit an advertisement in order~~
10 ~~to receive a free gift shall clearly disclose the steps that the~~
11 ~~consumer must take in order to redeem the free gift. The~~
12 ~~disclosure shall include, but shall not be limited to, all of the or~~
13 ~~commercial e-mail advertisement promoting or soliciting an~~
14 ~~Internet free gift offer to consumers shall provide a disclosure~~
15 ~~statement.~~

16 (b) The disclosure statement shall appear as soon as the
17 consumer opens the link associated with the advertisement or as
18 soon as the consumer opens the link contained within a
19 commercial e-mail advertisement.

20 (c) The disclosure statement shall contain a check-off box, to
21 be marked by the consumer electronically, confirming that the
22 consumer has read and agreed to the terms, conditions, and
23 obligations before proceeding with the redemption of the Internet
24 Free Gift Offer.

25 (d) The disclosure statement shall include, but not be limited
26 to, the following information:

27 (1) The number of products that must be purchased before
28 receiving the ~~free gift~~ Internet free gift offer.

29 (2) An approximation of the combined dollar amount of the
30 purchases that must be made in order to receive the ~~free gift~~
31 Internet free gift offer.

32 (3) The telephone number and e-mail address of the company
33 offering the ~~free gift~~ Internet free gift offer.

34 (4) An estimated length of time before the consumer will
35 receive the ~~free gift~~ Internet free gift offer.

36 ~~(b) The advertisement shall not permit the consumer to~~
37 ~~proceed with redeeming the free gift until the consumer has~~
38 ~~acknowledged that he or she has read the disclosure.~~

39 (5) The number of referrals to other separate unique
40 households necessary to redeem the Internet free gift offer.

1 (e) *The disclosure statement shall not be set forth in a footnote*
2 *of an advertisement or commercial e-mail advertisement.*
3 *Referencing the footnote with an asterisk or other symbol placed*
4 *next to the Internet free gift offer shall not exempt any*
5 *advertisement or commercial e-mail advertisement from this*
6 *requirement.*

7 17545.4. Notwithstanding any other provision of law, a
8 violation of this article shall not be a crime.

9 17545.5. The provisions of this article are severable. If any
10 provision of this article or its application is held invalid, that
11 invalidity shall not affect any other provision or application that
12 can be given effect without the invalid provision or application.